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Supplement to 1997
California
Administrative Procedure Act
Administrative Adjudication
2004

(covering legislative & regulatory
changes from 1997 — 2003)

State of California
**OFFICE OF
ADMINISTRATIVE
HEARINGS**



State of California
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**Supplement to
1997 California Administrative Procedure Act
Administrative Adjudication

2004**

(Covering changes from 1997 through 2003.
Discard previous supplements.)

Table of Contents

Government Code — Administrative Procedure Act

- 11370.5. Recommendations on administrative adjudication.
- 11371. Medical Quality Hearing Panel.
- 11410.60. Quasi-public entities.
- 11440.45. Admissibility of expressions of sympathy or benevolence
- 11440.60. Written communications in quasi-judicial proceedings; indication of person who paid to produce document or client on whose behalf communication is submitted.

Article 16. Administrative Adjudication Code of Ethics

- 11475. Administrative Adjudication Code of Ethics.
- 11475.10. Application of article; administrative law judge, defined.
- 11475.20. Governing Code for hearing and non-hearing conduct of judge or other presiding officer.
- 11475.30. Definitions.
- 11475.40. Code of Judicial Ethics; application of article.
- 11475.50. Acceptance of honoraria, gifts, or travel; violation of code; discipline.
- 11475.60. Application of article; compliance with provisions.
- 11475.70. Construction of article.
- 11504. Grant, issuance, or renewal of right, authority, license, or privilege; statement of issues; contents; verification; service.
- 11511. Depositions.
- 11517. Decisions.
- 11529. Interim orders suspending or imposing restrictions on license of medical care professional.

California Code of Regulations
 Title 1. General Provisions
 Division 2. Office of Administrative Hearings
 Chapter 1. General APA Hearing Procedures

- § 1000. Purpose.
- § 1002. Definitions.
- § 1004. Construction and Application of Regulations.
- § 1006. Format and Filing of Papers.
- § 1008. Service; Proof of Service.
- § 1012. *Ex Parte* Applications for Temporary or Interim Orders.
- § 1018. Agency Request for Hearing; Notice of Hearing.
- § 1020. Application Motion For Continuance Of Hearing.
- § 1022. Motions.
- § 1024. Subpoenas; Motion for a Protective Order.
- § 1026. Prehearing Conferences.
- § 1027. Informal Hearings.
- § 1028. Settlement Conferences; Settlements.
- § 1034. Peremptory Challenge.
- § 1038. Ordering the Record
- § 1042. Agency Request for Costs of Investigation and Prosecution of the Case.
- § 1044. Request for Expenses after Default.

Appendix

Code of Civil Procedure

- 1094.5. Inquiry into Validity of Administrative Order or Decision.
- 1985.3. Subpoena duces tecum; personal records of consumer.
- 1985.6. Employment records; notice to employee of subpoena; motion to quash or modify subpoena.
- 2015.5. Certification or declaration under penalty of perjury.

Health and Safety Code

- 1558. Prohibition of employment of or dismissal of certain persons; notice; hearings; disciplinary proceedings irrespective of employee actions; licensee noncompliance.

is not a client upon any ground provided by this section, or enter an order prohibiting any person from being a member of the board of directors, an executive director, or an officer of a licensee or the excluded person's employment or presence in the facility or otherwise take disciplinary action against the excluded person, notwithstanding any resignation, withdrawal of employment application, or change of duties by the excluded person, or any discharge, failure to hire, or reassignment of the excluded person by the licensee or that the excluded person no longer has contact with clients at the facility.

(g) A licensee's failure to comply with the department's * * * exclusion order after being notified of the order shall be grounds for disciplining the licensee pursuant to Section 1550.

(h)(1)(A) In cases where the excluded person * * * appealed the exclusion order, the person shall be prohibited from working in any facility or being licensed to operate any facility licensed by the department or from being a certified foster parent for the remainder of the excluded person's life, unless otherwise ordered by the department.

(B) The excluded individual may petition for reinstatement one year after the effective date of the decision and order of the department upholding the exclusion order pursuant to Section 11522 of the Government Code. The department shall provide the excluded person with a copy of Section 11522 of the Government Code with the decision and order.

(2)(A) In cases where the department informed the excluded person of his or her right to * * * appeal the exclusion order and the excluded person did not * * * appeal the exclusion order, the person shall be prohibited from working in any facility or being licensed to operate any facility licensed by the department or a certified foster parent for the remainder of the excluded person's life, unless otherwise ordered by the department.

(B) The excluded individual may petition for reinstatement after one year has elapsed from the date of the notification of the exclusion * * * order pursuant to Section 11522 of the Government Code. The department shall provide the excluded person with a copy of Section 11522 of the Government Code with the exclusion order.

(Amended by Stats. 1998, c. 311 (SB 933) § 28; Stats.1992, c. 1315 (A.B.2647), § 8; Stats.1997, c. 617 (A.B.747), § 5.)

(Added by Stats.1989, c. 825, § 1.)

final decision of the matter, when, in the opinion of the director, the action is necessary to protect residents or clients from physical or mental abuse, abandonment, or any other substantial threat to their health or safety.

(2) If the department requires the immediate removal of a member of the board of directors, an executive director, or an officer of a licensee or exclusion of an employee, prospective employee, or person who is not a client from a facility, the department shall serve an order of immediate exclusion upon the excluded person which shall notify the excluded person of the basis of the department's action and of the excluded person's right to a hearing.

(3) Within 15 days after the department serves an order of immediate exclusion, the excluded person may file a written *** appeal of the exclusion with the department. The department's action shall be final if the excluded person does not *** appeal the exclusion within the prescribed time. The department shall do the following upon receipt of a written *** appeal:

(A) Within 30 days of receipt of the *** appeal, serve an accusation upon the excluded person.

(B) Within 60 days of receipt of a notice of defense pursuant to Section 11506 of the Government Code by the *** excluded person *** to conduct a hearing on the accusation.

(4) An order of immediate exclusion of the excluded person from the facility shall remain in effect until the hearing is completed and the director has made a final determination on the merits. However, the order of immediate exclusion shall be deemed vacated if the director fails to make a final determination on the merits within 60 days after the original hearing has been completed.

(d) An excluded person who files a written *** appeal with the department pursuant to this section shall, as part of the written request, provide his or her current mailing address. The excluded person shall subsequently notify the department in writing of any change in mailing address, until the hearing process has been completed or terminated.

(e) Hearings held pursuant to this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code. The standard of proof shall be the preponderance of the evidence and the burden of proof shall be on the department.

(f) The department may institute or continue a disciplinary proceeding against a member of the board of directors, an executive director, or an officer of a licensee or an employee, prospective employee, or person who

*(Additions are underscored; Deletions marked by * * *)*

Government Code

11370.5. Recommendations on administrative adjudication

(a) The office is authorized and directed to study the subject of administrative adjudication in all its aspects; to submit its suggestions to the various agencies in the interests of fairness, uniformity and the expedition of business; and to report its recommendations to the Governor and Legislature * * *. All departments, agencies, officers, and employees of the state shall give the office ready access to their records and full information and reasonable assistance in any matter of research requiring recourse to them or to data within their knowledge or control. Nothing in this section authorizes an agency to provide access to records required by statute to be kept confidential.

(b) The office may adopt rules and regulations to carry out the functions and duties of the office under the Administrative Procedure Act. The regulations are subject to Chapter 3.5 (commencing with Section 11340).

(Added by Stats. 1961, c. 2048; Amended by Stats 1995 c. 938 (SB 523) § 18, operative July 1, 1997. Amended by Stats. 2002, c. 370 (AB 2283).)

11371. Medical quality hearing panel

(a) There is within the Office of Administrative Hearings a Medical Quality Hearing Panel, consisting of no fewer than five full-time administrative law judges. The administrative law judges shall have medical training as recommended by the Division of Medical Quality of the Medical Board of California and approved by the Director of the Office of Administrative Hearings.

(b) The director shall determine the qualifications of panel members, supervise their training, and coordinate the publication of a reporter of decisions pursuant to this section. The panel shall include only those persons specifically qualified and shall at no time constitute more than 25 percent of the total number of administrative law judges within the Office of Administrative Hearings. If the members of the panel do not have a full workload, they may be assigned work by the Director of the Office of Administrative Hearings. When the medically related case workload exceeds the capacity of the members of the panel, additional judges shall be requested to be added to the panels as appropriate. When this workload overflow occurs on a temporary basis, the Director of the Office of Administrative Hearings shall supply judges from the Office of Administrative Hearings to adjudicate the cases.

(c) The decisions of the administrative law judges of the panel, together with any court decisions reviewing those decisions, shall be published in a quarterly "Medical Discipline Report," to be funded upon appropriation by the Legislature from the Contingent Fund of the Medical Board of California.

(d) The administrative law judges of the panel shall have panels of experts available. The panels of experts shall be appointed by the Director of the Office of Administrative Hearings, with the advice of the Medical Board of California. These panels of experts may be called as witnesses by the administrative law judges of the panel to testify on the record about any matter relevant to a proceeding and subject to cross-examination by all parties, and Section 11430.30 does not apply in a proceeding under this section. The administrative law judge may award reasonable expert witness fees to any person or persons serving on a panel of experts, which shall be paid from the Contingent Fund of the Medical Board of California upon appropriation by the Legislature.

* * *

(Amended by Stats. 2002, c. 1085 (SB 1950); Stats.1998, c. 878 (S.B.2239), § 56.)

11410.60. Quasi-public entities

(a) As used in this section, "quasi-public entity" means an entity, other than a governmental agency, whether characterized by statute as a public corporation, public instrumentality, or otherwise, that is expressly created by statute for the purpose of administration of a state function.

(b) This chapter applies to an adjudicative proceeding conducted by a quasi-public entity if all of the following conditions are satisfied:

(1) A statute vests the power of decision in the quasi-public entity.

(2) A statute, the United States Constitution, or the California Constitution, requires an evidentiary hearing for determination of facts for formulation and issuance of the decision. Nothing in this section is intended to create an evidentiary hearing requirement that is not otherwise statutorily or constitutionally imposed.

(3) The decision is not otherwise subject to administrative review in an adjudicative proceeding to which this chapter applies.

(c) For the purpose of application of this chapter to a decision by a quasi-public entity:

(1) "Agency," as defined in Section 11405.30, also includes the quasi-public entity.

Health and Safety Code

1558. Prohibition of employment of or dismissal of certain persons; notice; hearings; disciplinary proceedings irrespective of employee actions; licensee noncompliance

(a) The department may prohibit any person from being a member of the board of directors, an executive director, or an officer of a licensee, or a licensee from employing, or continuing the employment of, or allowing in a licensed facility, or allowing contact with clients of a licensed facility by, any employee, prospective employee, or person who is not a client who has:

(1) Violated, or aided or permitted the violation by any other person of, any provisions of this chapter or of any rules or regulations promulgated under this chapter.

(2) Engaged in conduct which is inimical to the health, morals, welfare, or safety of either an individual in or receiving services from the facility, or the people of the State of California.

(3) Been denied an exemption to work or to be present in a facility, when that person has been convicted of a crime as defined in Section 1522.

(4) Engaged in any other conduct which would constitute a basis for disciplining a licensee.

(5) Engaged in acts of financial malfeasance concerning the operation of a facility, including, but not limited to, improper use or embezzlement of client moneys and property or fraudulent appropriation for personal gain of facility moneys and property, or willful or negligent failure to provide services.

(b) The excluded person, the facility, and the licensee shall be given written notice of the basis of the department's action and of the excluded person's right to * * * an appeal. The notice shall be served either by personal service or by registered mail. Within 15 days after the department serves the notice, the excluded person may file with the department a written * * * appeal of the exclusion order. If the excluded person fails to file a written * * * appeal within the prescribed time, the department's action shall be final.

(c)(1) The department may require the immediate removal of a member of the board of directors, an executive director, or an officer of a licensee or exclusion of an employee, prospective employee, or person who is not a client from a facility pending a

2015.5. Certification or declaration under penalty of perjury

Whenever, under any law of this state or under any rule, regulation, order or requirement made pursuant to the law of this state, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn statement, declaration, verification, certificate, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may with like force and effect be supported, evidenced, established or proved by the unsworn statement, declaration, verification, or certificate, in writing of such person which recites that it is certified or declared by him or her to be true under penalty of perjury, is subscribed by him or her, and (1), if executed within this state, states the date and place of execution, or (2), if executed at any place, within or without this state, states the date of execution and that it is so certified or declared under the laws of the State of California. The certification or declaration may be in substantially the following form:

(a) If executed within this state:

"I certify (or declare) under penalty of perjury that the foregoing is true and correct":

(Date and Place)

(Signature)

(b) If executed at any place, within or without this state:

"I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct":

(Date)

(Signature)

(Added by Stats.1957, c. 1612, p. 2959, § 1. Amended by Stats.1961, c. 495, p. 1589, § 1; Stats.1963, c. 2080, p. 4346, § 1; Stats.1975, c. 666, p. 1456, § 1, operative Jan. 1, 1977; Stats.1980, c. 889, p. 2789, § 1, operative July 1, 1981.)

(2) "Regulation" includes a rule promulgated by the quasi-public entity.

(3) Article 8 (commencing with Section 11435.05), requiring language assistance in an adjudicative proceeding, applies to a quasi-public entity to the same extent as a state agency under Section 11018.

(d) This section shall be strictly construed to effectuate the intent of the Legislature to apply this chapter only to a decision by a quasi-public entity that is expressly created by statute for the purpose of administration of a state function.

(e) This section shall not apply to a decision made on authority of an approved plan of operations of a quasi-public entity that is subject to the regulation or supervision of the Insurance Commissioner.

(Added by Stats.1997, c. 220 (S.B.68), § 9, eff. Aug. 4, 1997.)

11440.45. Admissibility of expressions of sympathy or benevolence

(a) In any proceedings pursuant to this chapter or Chapter 5 (commencing with Section 11500), the portion of statements, writings, or benevolent gestures expressing sympathy or a general sense of benevolence relating to the pain, suffering, or death of a person involved in an accident and made to that person or to the family of that person shall be inadmissible as evidence of an admission of liability. A statement of fault, however, which is part of, or in addition to, any of the above shall not be inadmissible pursuant to this section.

(b) For purposes of this section:

(1) "Accident" means an occurrence resulting in injury or death to one or more persons which is not the result of willful action by a party.

(2) "Benevolent gestures" means actions which convey a sense of compassion or commiseration emanating from humane impulses.

(3) "Family" means the spouse, parent, grandparent, stepmother, stepfather, child, grandchild, brother, sister, half brother, half sister, adopted children of parent, or spouse's parents of an injured party.

(Added by Stats. 2002, c. 92 (AB 2723) § 1.)

11440.60. Written communications in quasi-judicial proceedings; indication of person who paid to produce document or client on whose behalf communication is submitted

(a) For purposes of this section, the following terms have the following meaning:

(1) "Quasi-judicial proceeding" means any of the following:

- (A) A proceeding to determine the rights or duties of a person under existing laws, regulations, or policies.
- (B) A proceeding involving the issuance, amendment, or revocation of a permit or license.
- (C) A proceeding to enforce compliance with existing law or to impose sanctions for violations of existing law.
- (D) A proceeding at which action is taken involving the purchase or sale of property, goods, or services by an agency.
- (E) A proceeding at which an action is taken awarding a grant or a contract.

(2) "Written communication" means any report, study, survey, analysis, letter, or any other written document.

(b) Any person submitting a written communication, which is specifically generated for the purpose of being presented at the agency hearing to which it is being communicated, to a state agency in a quasi-judicial proceeding that is directly paid for by anyone other than the person who submitted the written communication shall clearly indicate any person who paid to produce the written communication.

(c) A state agency may refuse or ignore a written communication submitted by an attorney or any other authorized representative on behalf of a client in a quasi-judicial proceeding, unless the written communication clearly indicates the client on whose behalf the communication is submitted to the state agency.

(Added by Stats.1997, c. 192 (S.B.504), § 1.)

Article 16. Administrative Adjudication Code of Ethics

11475. Administrative Adjudication Code of Ethics.

The rules imposed by this article may be referred to as the Administrative Adjudication Code of Ethics.

(Added by Stats. 1998, c. 95 (AB 2164), §1.)

objection that cites the specific grounds on which production of the employment records should be prohibited. No witness or deposition officer shall be required to produce employment records after receipt of notice that * * * the motion has been brought * * * by an employee, or after receipt of a written objection from a nonparty employee, except upon order of the court in which the action is pending or by agreement of the parties, witnesses, and employees affected. The party requesting an employee's employment records may bring a motion under subdivision (c) of Section 1987 to enforce the subpoena within 20 days of service of the written objection. The motion shall be accompanied by a declaration showing a reasonable and good faith attempt at informal resolution of the dispute between the party requesting the employment records and the employee or the employee's attorney.

(g) Upon good cause shown and provided that the rights of witness and employees are preserved, a subpoenaing party shall be entitled to obtain an order shortening the time for service of a subpoena duces tecum or waiving the requirements of subdivision (b) where due diligence by the subpoenaing party has been shown.

(h) Nothing contained in this section shall be construed to apply to any subpoena duces tecum which does not request the records of any particular employee or employees and which requires a custodian of records to delete all information which would in any way identify any employee whose records are to be produced.

(i) This section shall not apply to proceedings conducted under Division 1 (commencing with Section 50), Division 4 (commencing with Section 3200), Division 4.5 (commencing with Section 6100), or Division 4.7 (commencing with Section 6200) of the Labor Code.

(j) Failure to comply with this section shall be sufficient basis for the witness to refuse to produce the employment records sought by subpoena duces tecum.

(Amended Stats. 1999, c. 794 (A.B. 794), §2.)

(Added by Stats.1995, c. 299 (A.B.617), § 1. Amended by Stats.1996, c. 679 (S.B.1821), § 2; Stats.1997, c. 442 (A.B.758), § 11; Stats. 1998, c. 932 (AB 1094) § 20.)

1013 if service is by mail.

(c) Prior to the production of the records, the subpoenaing party shall either:

(1) Serve or cause to be served upon the witness a proof of personal service or of service by mail attesting to compliance with subdivision (b).

(2) Furnish the witness a written authorization to release the records signed by the employee or by his or her attorney of record. The witness may presume that the attorney purporting to sign the authorization on behalf of the employee acted with the consent of the employee, and that any objection to release of records is waived.

(d) A subpoena duces tecum for the production of employment records shall be served in sufficient time to allow the witness a reasonable time, as provided in paragraph (1) of subdivision (d) of Section 2020, to locate and produce the records or copies thereof.

* * *

(e) Every copy of the subpoena duces tecum and affidavit served on an employee or his or her attorney in accordance with subdivision (b) shall be accompanied by a notice, in a typeface designed to call attention to the notice, indicating that (1) employment records about the employee are being sought from the witness named on the subpoena; (2) the employment records may be protected by a right of privacy; (3) if the employee objects to the witness furnishing the records to the party seeking the records the employee shall file papers with the court prior to the date specified for production on the subpoena; and (4) if the subpoenaing party does not agree in writing to cancel or limit the subpoena, an attorney should be consulted about the employee's interest in protecting his or her rights of privacy. If a notice of taking of deposition is also served, that other notice may be set forth in a single document with the notice required by this subdivision.

(f) Any employee whose employment records are sought by a subpoena duces tecum may, prior to the date for production, bring a motion under Section 1987.1 to quash or modify the subpoena duces tecum. Notice of the bringing of that motion shall be given to the witness and the deposition officer at least five days prior to production. The failure to provide notice to the deposition officer shall not invalidate the motion to quash or modify the subpoena duces tecum but may be raised by the deposition officer as an affirmative defense in any action for liability for improper release of records. Any nonparty employee whose employment records are sought by a subpoena duces tecum may, prior to the date of production, serve on the subpoenaing party, and the deposition officer, the witness a written

11475.10. Application of Article; administrative law judge, defined.

(a) This article applies to the following persons:

(1) An administrative law judge. As used in this subdivision, "administrative law judge" means an incumbent of that position, as defined by the State Personnel Board, for each class specification for Administrative Law Judge.

(2) A presiding officer to which this article is made applicable by statute or regulation.

(b) This article shall apply notwithstanding any general statutory provision that this chapter does not apply to some or all of a state agency's adjudicative proceedings.

(Added by Stats. 1998, c. 95 (AB 2164), §1.)

11475.20. Governing Code for hearing and non-hearing conduct of judge or other presiding officer.

Except as otherwise provided in this article, the Code of Judicial Ethics adopted by the Supreme Court pursuant to subdivision (m) of Section 18 of Article VI of the California Constitution for the conduct of judges governs the hearing and nonhearing conduct of an administrative law judge or other presiding officer to which this article applies.

(Added by Stats. 1998, c. 95 (AB 2164), §1.)

11475.30. Definitions.

For the purpose of this article, the following terms used in the Code of Judicial Ethics have the meanings provided in this section:

(a) "Appeal" means administrative review.

(b) "Court" means the agency conducting an adjudicative proceeding.

(c) "Judge" means administrative law judge or other presiding officer to which this article applies. Related terms, including "judicial," "judiciary," and "justice," mean comparable concepts in administrative adjudication.

(d) "Law" includes regulation and precedent decision.

(Added by Stats. 1998, c. 95 (AB 2164), §1.)

11475.40. Code of Judicial Ethics; application of article.

The following provisions of the Code of Judicial Ethics do not apply under this article:

- (a) Canon 3B(7), to the extent it relates to ex parte communications.
- (b) Canon 3B(10).
- (c) Canon 3D(3).
- (d) Canon 4C.
- (e) Canons 4E(1), 4F, and 4G.
- (f) Canons 5A"5D. However, the introductory paragraph of Canon 5 applies to persons subject to this article notwithstanding Chapter 9.5 (commencing with Section 3201) of Division 4 of Title 1, relating to political activities of public employees.
- (g) Canon 6.

(Added by Stats. 1998, c. 95 (AB 2164), §1.)

11475.50. Acceptance of honoraria, gifts, or travel; violation of code; discipline.

A violation of an applicable provision of the Code of Judicial Ethics, or a violation of the restrictions and prohibitions on accepting honoraria, gifts, or travel that otherwise apply to elected state officers pursuant to Chapter 9.5 (commencing with Section 89500) of Title 9, by an administrative law judge or other presiding officer to which this article applies is cause for discipline by the employing agency pursuant to Section 19572.

(Added by Stats. 1998, c. 95 (AB 2164), §1.)

11475.60. Application of article; compliance with provisions.

(a) Except as provided in subdivision (b), a person to whom this article applies shall comply immediately with all applicable provisions of the Code of Judicial Ethics.

(b) A person to whom this article applies shall comply with Canon 4D (2) of the Code of Judicial Ethics as soon as reasonably possible and shall do so in any event within a period of one year after the article becomes applicable.

(Added by Stats. 1998, c. 95 (AB 2164), §1.)

1985.6. Employment records; notice to employee of subpoena; motion to quash or modify subpoena

(a) For purposes of this section, the following definitions apply:

- (1) "Employment records" means the original or any copy of books, documents, * * * other writings, or electronic data pertaining to the employment of any employee maintained by the current or former employer of the employee.
- (2) "Employee" means any individual who is or has been employed by a witness subject to a subpoena duces tecum.
- (3) "Subpoenaing party" means the person or persons causing a subpoena duces tecum to be issued or served in connection with any civil action or proceeding, but shall not include the state or local agencies described in Section 7465 of the Government Code, or any entity provided for under Article VI of the California Constitution in any proceeding maintained before an adjudicative body of that entity pursuant to Chapter 4 (commencing with Section 6000) of Division 3 of the Business and Professions Code.
- (4) "Deposition officer" means a person who meets the qualifications specified in paragraph (3) of subdivision (d) of Section 2020.

(b) * * * Prior to the date called for in the subpoena duces tecum of the production of employment records, the subpoenaing party shall serve or cause to be served on the employee whose records are being sought a copy of: the subpoena duces tecum; the affidavit supporting the issuance of the subpoena, if any; and the notice described in subdivision (e), and proof of service as provided in paragraph (1) of subdivision (c). This service shall be made as follows:

- (1) To the employee personally, or at his or her last known address, or in accordance with Chapter 5 (commencing with Section 1010) of Title 14 of Part 3, or, if he or she is a party, to his or her attorney of record. If the employee is a minor, service shall be made on the minor's parent, guardian, conservator, or similar fiduciary, or if one of them cannot be located with reasonable diligence, then service shall be made on any person having the care or control of the minor, or with whom the minor resides, and on the minor if the minor is at least 12 years of age.
- (2) Not less than 10 days prior to the date for production specified in the subpoena duces tecum, plus the additional time provided by Section 1013 if service is by mail.
- (3) At least five days prior to service upon the custodian of the employment records, plus the additional time provided by Section

tecum and who is a party to the civil action in which this subpoena duces tecum is served may, prior to the date for production, bring a motion under Section 1987.1 to quash or modify the subpoena duces tecum. Notice of the bringing of that motion shall be given to the witness and deposition officer at least five days prior to production. The failure to provide notice to the deposition officer shall not invalidate the motion to quash or modify the subpoena duces tecum but may be raised by the deposition officer as an affirmative defense in any action for liability for improper release of records. Any other consumer or nonparty whose personal records are sought by a subpoena duces tecum may, prior to the date of production, serve on the subpoenaing party * * * the witness, and the deposition officer, a written objection that cites the specific grounds on which production of the personal records should be prohibited. No witness or deposition officer shall be required to produce personal records after receipt of notice that * * * the motion has been brought * * * by consumer, or after receipt of a written objection from a nonparty consumer, except upon order of the court in which the action is pending or by agreement of the parties, witnesses, and consumers affected. The party requesting a consumer's personal records may bring a motion under Section 1987.1 to enforce the subpoena within 20 days of service of the written objection. The motion shall be accompanied by a declaration showing a reasonable and good faith attempt at informal resolution of the dispute between the party requesting the personal records and the consumer or the consumer's attorney.

(h) Upon good cause shown and provided that the rights of witnesses and consumers are preserved, a subpoenaing party shall be entitled to obtain an order shortening the time for service of a subpoena duces tecum or waiving the requirements of subdivision (b) where due diligence by the subpoenaing party has been shown.

(i) Nothing contained in this section shall be construed to apply to any subpoena duces tecum which does not request the records of any particular consumer or consumers and which requires a custodian of records to delete all information which would in any way identify any consumer whose records are to be produced.

(j) This section shall not apply to proceedings conducted under Division 1 (commencing with Section 50), Division 4 (commencing with Section 3200), Division 4.5 (commencing with Section 6100), or Division 4.7 (commencing with Section 6200) of the Labor Code.

(k) Failure to comply with this section shall be sufficient basis for the witness to refuse to produce the personal records sought by a subpoena duces tecum.

(Amended Stats. 1999, c. 794 (A.B. 794), §1.)

11475.70. Construction of article.

Nothing in this article shall be construed or is intended to limit or affect the rights of an administrative law judge or other presiding officer under Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1.

(Added by Stats. 1998, c. 95 (AB 2164), §1.)

11504. Grant, issuance, or renewal of right, authority, license, or privilege; statement of issues; contents; verification; service.

A hearing to determine whether a right, authority, license, or privilege should be granted, issued, or renewed shall be initiated by filing a statement of issues. The statement of issues shall be a written statement specifying the statutes and rules with which the respondent must show compliance by producing proof at the hearing *** and, in addition, any particular matters that have come to the attention of the initiating party and that would authorize a denial of the agency action sought. The statement of issues shall be verified unless made by a public officer acting in his or her official capacity or by an employee of the agency before which the proceeding is to be held. The verification may be on information and belief. The statement of issues shall be served in the same manner as an accusation, except that, if the hearing is held at the request of the respondent, Sections 11505 and 11506 shall not apply and the statement of issues together with the notice of hearing shall be delivered or mailed to the parties as provided in Section 11509. Unless a statement to respondent is served pursuant to Section 11505, a copy of Sections 11507.5, 11507.6, and 11507.7, and the name and address of the person to whom requests permitted by Section 11505 may be made, shall be served with the statement of issues.

(Added by Stats.1945, c. 867, p. 1628, § 1. Amended by Stats.1947, c. 491, p. 1471, § 4; Stats.1968, c. 808, p. 1559, § 1.)

(Amended by Stats.1996, c. 124 (A.B.3470), § 36; Stats.1997, c. 17 (S.B.947), § 50.)

11511. Depositions.

On verified petition of any party, an administrative law judge or, if an administrative law judge has not been appointed, an agency may order that the testimony of any material witness residing within or without the state be taken by deposition in the manner prescribed by law for depositions in civil actions under Article 3 (commencing with Section 2016) of Chapter 3 of Title 4 of Part 4 of the Code of Civil Procedure. The petition shall set forth the nature of the pending proceeding; the name and address of the witness whose testimony is desired; a showing of the materiality of the testimony; a showing that the witness will be unable or cannot be compelled to attend; and shall request an order requiring the witness to appear and testify before an officer named in the petition for that purpose. The petitioner shall serve notice of hearing and a copy of the petition on the other parties at least 10 days before the hearing. Where the witness resides outside the state and where the administrative law judge or agency has ordered the taking of the testimony by deposition, the agency shall obtain an order of court to that effect by filing a petition therefor in the superior court in Sacramento County. The proceedings thereon shall be in accordance with the provisions of Section 11189.

(Amended by Stats. 1998, c.931 (SB 2139), § 182; Stats.1995, c. 938 (S.B.523), § 36, operative July 1, 1997.)

11517. Decisions.

(a) A contested case may be originally heard by the agency itself and subdivision (b) shall apply. Alternatively, at the discretion of the agency, an administrative law judge may originally hear the case alone and subdivision (c) shall apply.

(b) If a contested case is originally heard before an agency itself, all of the following provisions apply:

(1) An administrative law judge shall be present during the consideration of the case and, if requested, shall assist and advise the agency in the conduct of the hearing.

(2) No member of the agency who did not hear the evidence shall vote on the decision.

(3) The agency shall issue its decision within 100 days of submission of the case.

(c)(1) If a contested case is originally heard by an administrative law judge alone, he or she shall prepare within 30 days after the case is submitted to him or her a proposed decision in a form that may be adopted by the agency as the final decision in the case.

least 12 years of age.

(2) Not less than 10 days prior to the date for production specified in the subpoena duces tecum, plus the additional time provided by Section 1013 if service is by mail.

(3) At least five days prior to service upon the custodian of the records, plus the additional time provided by Section 1013 if service is by mail.

(c) Prior to the production of the records, the subpoenaing party shall do either of the following:

(1) Serve or cause to be served upon the witness a proof of personal service or of service by mail attesting to compliance with subdivision (b).

(2) Furnish the witness a written authorization to release the records signed by the consumer or by his or her attorney of record. The witness may presume that any attorney purporting to sign the authorization on behalf of the consumer acted with the consent of the consumer, and that any objection to release of records is waived.

(d) A subpoena duces tecum for the production of personal records shall be served in sufficient time to allow the witness a reasonable time, as provided in paragraph (1) of subdivision (d) of Section 2020, to locate and produce the records or copies thereof. * * *

(e) Every copy of the subpoena duces tecum and affidavit, if any, served on a consumer or his or her attorney in accordance with subdivision (b) shall be accompanied by a notice, in a typeface designed to call attention to the notice, indicating that (1) records about the consumer are being sought from the witness named on the subpoena; (2) if the consumer objects to the witness furnishing the records to the party seeking the records, the consumer must file papers with the court or serve a written objection as provided in subdivision (g) prior to the date specified for production on the subpoena; and (3) if the party who is seeking the records will not agree in writing to cancel or limit the subpoena, an attorney should be consulted about the consumer's interest in protecting his or her rights of privacy. If a notice of taking of deposition is also served, that other notice may be set forth in a single document with the notice required by this subdivision.

(f) A subpoena duces tecum for personal records maintained by a telephone corporation which is a public utility, as defined in Section 216 of the Public Utilities Code, shall not be valid or effective unless it includes a consent to release, signed by the consumer whose records are requested, as required by Section 2891 of the Public Utilities Code.

(g) Any consumer whose personal records are sought by a subpoena duces

licensed pursuant to Division 6 (commencing with Section 17000) of the Financial Code or exempt from licensure pursuant to Section 17006 of the Financial Code, attorney, accountant, institution of the Farm Credit System, as specified in Section 2002 of Title 12 of the United States Code, or telephone corporation which is a public utility, as defined in Section 216 of the Public Utilities Code, or psychotherapist, as defined in Section 1010 of the Evidence Code, or a private or public preschool, elementary school, * * * secondary school, or postsecondary school as described in Section 76244 of the Education Code.

(2) "Consumer" means any individual, partnership of five or fewer persons, association, or trust which has transacted business with, or has used the services of, the witness or for whom the witness has acted as agent or fiduciary.

(3) "Subpoenaing party" means the person or persons causing a subpoena duces tecum to be issued or served in connection with any civil action or proceeding pursuant to this code, but shall not include the state or local agencies described in Section 7465 of the Government Code, or any entity provided for under Article VI of the California Constitution in any proceeding maintained before an adjudicative body of that entity pursuant to Chapter 4 (commencing with Section 6000) of Division 3 of the Business and Professions Code.

(4) "Deposition officer" means a person who meets the qualifications specified in paragraph (3) of subdivision (d) of Section 2020.

(b) * * * Prior to the date called for in the subpoena duces tecum for the production of personal records, the subpoenaing party shall serve or cause to be served on the consumer whose records are being sought a copy of the subpoena duces tecum, of the affidavit supporting the issuance of the subpoena, if any, and of the notice described in subdivision (e), and proof of service as indicated in paragraph (1) of subdivision (c). This service shall be made as follows:

(1) To the consumer personally, or at his or her last known address, or in accordance with Chapter 5 (commencing with Section 1010) of Title 14 of Part 3, or, if he or she is a party, to his or her attorney of record. If the consumer is a minor, service shall be made on the minor's parent, guardian, conservator, or similar fiduciary, or if one of them cannot be located with reasonable diligence, then service shall be made on any person having the care or control of the minor or with whom the minor resides or by whom the minor is employed, and on the minor if the minor is at

Failure of the administrative law judge to deliver a proposed decision within the time required does not prejudice the rights of the agency in the case. Thirty days after the receipt by the agency of the proposed decision, a copy of the proposed decision shall be filed by the agency as a public record and a copy shall be served by the agency on each party and his or her attorney. The filing and service is not an adoption of a proposed decision by the agency.

(2) Within 100 days of receipt by the agency of the administrative law judge's proposed decision, the agency may act as prescribed in subparagraphs (A) to (E), inclusive. If the agency fails to act as prescribed in subparagraphs (A) to (E), inclusive, within 100 days of receipt of the proposed decision, the proposed decision shall be deemed adopted by the agency. The agency may do any of the following:

(A) Adopt the proposed decision in its entirety.

(B) Reduce or otherwise mitigate the proposed penalty and adopt the balance of the proposed decision.

(C) Make technical or other minor changes in the proposed decision and adopt it as the decision. Action by the agency under this paragraph is limited to a clarifying change or a change of a similar nature that does not affect the factual or legal basis of the proposed decision.

(D) Reject the proposed decision and refer the case to the same administrative law judge if reasonably available, otherwise to another administrative law judge, to take additional evidence. If the case is referred to an administrative law judge pursuant to this subparagraph, he or she shall prepare a revised proposed decision, as provided in paragraph (1), based upon the additional evidence and the transcript and other papers that are part of the record of the prior hearing. A copy of the revised proposed decision shall be furnished to each party and his or her attorney as prescribed in this subdivision.

(E) Reject the proposed decision, and decide the case upon the record, including the transcript, or upon an agreed statement of the parties, with or without taking additional evidence. By stipulation of the parties, the agency may decide the case upon the record without including the transcript. If the agency acts pursuant to this subparagraph, all of the following provisions apply:

(i) A copy of the record shall be made available to the parties. The agency may require payment of fees covering

direct costs of making the copy.

(ii) The agency itself shall not decide any case provided for in this subdivision without affording the parties the opportunity to present either oral or written argument before the agency itself. If additional oral evidence is introduced before the agency itself, no agency member may vote unless the member heard the additional oral evidence.

(iii) The authority of the agency itself to decide the case under this subdivision includes authority to decide some but not all issues in the case.

(iv) If the agency elects to proceed under this subparagraph, the agency shall issue its final decision not later than 100 days after rejection of the proposed decision. If the agency elects to proceed under this subparagraph, and has ordered a transcript of the proceedings before the administrative law judge, the agency shall issue its final decision not later than 100 days after receipt of the transcript. If the agency finds that a further delay is required by special circumstance, it shall issue an order delaying the decision for no more than 30 days and specifying the reasons therefor. The order shall be subject to judicial review pursuant to Section 11523.

(d) The decision of the agency shall be filed immediately by the agency as a public record and a copy shall be served by the agency on each party and his or her attorney.

(Added by Stats. 1999, c. 339 (A.B. 1692), § 2. Previous section repealed by Stats. 1999, c. 339 (A.B. 1692), § 1.)

11529. Interim orders suspending or imposing restrictions on license of medical care professional.

(a) The administrative law judge of the Medical Quality Hearing Panel established pursuant to Section 11371 may issue an interim order suspending a license, or imposing drug testing, continuing education, supervision of procedures, or other license restrictions. Interim orders may be issued only if the affidavits in support of the petition show that the licensee has engaged in, or is about to engage in, acts or omissions constituting a violation of the Medical Practice Act or the appropriate practice act governing each allied health profession, or is unable to practice safely due to a mental or physical condition, and that permitting the licensee to continue to engage in the profession for which the license was

appeal, the stay shall be continued by operation of law for a period of 20 days from the filing of the notice. If an appeal is taken from the granting of the writ, the order or decision of the hospital or agency is stayed pending the determination of the appeal unless the court to which the appeal is taken shall otherwise order. Where any final administrative order or decision is the subject of proceedings under this section, if the petition shall have been filed while the penalty imposed is in full force and effect, the determination shall not be considered to have become moot in cases where the penalty imposed by the administrative agency has been completed or complied with during the pendency of the proceedings.

(i) Any administrative record received for filing by the clerk of the court may be disposed of as provided in Sections 1952, 1952.2, and 1952.3.

(j) Effective January 1, 1996, this subdivision shall apply to state employees in State Bargaining Unit 5. * * * This subdivision shall apply to state employees in State Bargaining Unit 8. For purposes of this section, the court is not authorized to review any disciplinary decisions reached pursuant to Section 19576.1 * * * or 19576.5 of the Government Code.

(k) This section shall not apply to state employees in State Bargaining Unit 11 disciplined or rejected on probation for positive drug test results who expressly waive appeal to the State Personnel Board and invoke arbitration proceedings pursuant to a State Bargaining Unit 11 collective bargaining agreement.

(Amended Stats. 2000, c. 402 (A.B. 649), §1.)

(Amended Stats. 1999, c. 446 (A.B. 1013), § 1.)

1985.3. Subpoena duces tecum; personal records of consumer

(a) For purposes of this section, the following definitions apply:

(1) "Personal records" means the original, any copy of books, documents, * * * other writings, or electronic data pertaining to a consumer and which are maintained by any "witness" which is a physician, dentist, ophthalmologist, optometrist, chiropractor, physical therapist, acupuncturist, podiatrist, veterinarian, veterinary hospital, veterinary clinic, pharmacist, pharmacy, hospital, medical center, clinic, radiology or MRI center, clinical or diagnostic laboratory, state or national bank, state or federal association (as defined in Section 5102 of the Financial Code), state or federal credit union, trust company, anyone authorized by this state to make or arrange loans that are secured by real property, security brokerage firm, insurance company, title insurance company, underwritten title company, escrow agent

from the granting of the writ, the order or decision of the agency is stayed pending the determination of the appeal unless the court to which the appeal is taken shall otherwise order. Where any final administrative order or decision is the subject of proceedings under this section, if the petition shall have been filed while the penalty imposed is in full force and effect, the determination shall not be considered to have become moot in cases where the penalty imposed by the administrative agency has been completed or complied with during the pendency of the proceedings.

(h) (1) The court in which proceedings under this section are instituted may stay the operation of the administrative order or decision of any licensed hospital or any state agency made after a hearing required by statute to be conducted under the Administrative Procedure Act, as set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, conducted by the agency itself or an administrative law judge on the staff of the Office of Administrative Hearings pending the judgment of the court, or until the filing of a notice of appeal from the judgment or until the expiration of the time for filing the notice, whichever occurs first. However, the stay shall not be imposed or continued unless the court is satisfied that the public interest will not suffer and that the licensed hospital or agency is unlikely to prevail ultimately on the merits. The application for the stay shall be accompanied by proof of service of a copy of the application on the respondent. Service shall be made in the manner provided by Title 5 (commencing with Section 405) of Part 2 or Chapter 5 (commencing with Section 1010) of Title 14 of Part 2.

(2) The standard set forth in this subdivision for obtaining a stay shall apply to any administrative order or decision of an agency that issues licenses pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code or pursuant to the Osteopathic Initiative Act or the Chiropractic Initiative Act. With respect to orders or decisions of other state agencies, the standard in this subdivision shall apply only when the agency has adopted the proposed decision of the administrative law judge in its entirety or has adopted the proposed decision but reduced the proposed penalty pursuant to subdivision (b) of Section 11517 of the Government Code; otherwise the standard in subdivision (g) shall apply.

(3) If an appeal is taken from a denial of the writ, the order or decision of the hospital or agency shall not be stayed except upon the order of the court to which the appeal is taken. However, in cases where a stay is in effect at the time of filing the notice of

issued will endanger the public health, safety, or welfare.

(b) All orders authorized by this section shall be issued only after a hearing conducted pursuant to subdivision (d), unless it appears from the facts shown by affidavit that serious injury would result to the public before the matter can be heard on notice. Except as provided in subdivision (c), the licensee shall receive at least 15 days' prior notice of the hearing, which notice shall include affidavits and all other information in support of the order.

(c) If an interim order is issued without notice, the administrative law judge who issued the order without notice shall cause the licensee to be notified of the order, including affidavits and all other information in support of the order by a 24-hour delivery service. That notice shall also include the date of the hearing on the order, which shall be conducted in accordance with the requirement of subdivision (d), not later than 20 days from the date of issuance. The order shall be dissolved unless the requirements of subdivision (a) are satisfied.

(d) For the purposes of the hearing conducted pursuant to this section, the licentiate shall, at a minimum, have the following rights:

- (1) To be represented by counsel.
- (2) To have a record made of the proceedings, copies of which may be obtained by the licentiate upon payment of any reasonable charges associated with the record.
- (3) To present written evidence in the form of relevant declarations, affidavits, and documents.

The discretion of the administrative law judge to permit testimony at the hearing conducted pursuant to this section shall be identical to the discretion of a superior court judge to permit testimony at a hearing conducted pursuant to Section 527 of the Code of Civil Procedure.

- (4) To present oral argument.

(e) Consistent with the burden and standards of proof applicable to a preliminary injunction entered under Section 527 of the Code of Civil Procedure, the administrative law judge shall grant the interim order where, in the exercise of discretion, the administrative law judge concludes that:

- (1) There is a reasonable probability that the petitioner will prevail in the underlying action.
- (2) The likelihood of injury to the public in not issuing the order outweighs the likelihood of injury to the licensee in issuing the order.

(f) In all cases where an interim order is issued, and an accusation is not filed and served pursuant to Sections 11503 and 11505 within 15 days of the date in which the parties to the hearing on the interim order have submitted the matter, the order shall be dissolved.

Upon service of the accusation the licensee shall have, in addition to the rights granted by this section, all of the rights and privileges available as specified in this chapter. If the licensee requests a hearing on the accusation, the board shall provide the licensee with a hearing within 30 days of the request, unless the licensee stipulates to a later hearing, and a decision within 15 days of the date * * * the decision is received from the administrative law judge, or the board shall nullify the interim order previously issued, unless good cause can be shown by the Division of Medical Quality for a delay.

(g) Where an interim order is issued, a written decision shall be prepared within 15 days of the hearing, by the administrative law judge, including findings of fact and a conclusion articulating the connection between the evidence produced at the hearing and the decision reached.

(h) Notwithstanding the fact that interim orders issued pursuant to this section are not issued after a hearing as otherwise required by this chapter, interim orders so issued shall be subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure. The relief which may be ordered shall be limited to a stay of the interim order. Interim orders issued pursuant to this section are final interim orders and, if not dissolved pursuant to subdivision (c) or (f), may only be challenged administratively at the hearing on the accusation.

(i) The interim order provided for by this section shall be:

(1) In addition to, and not a limitation on, the authority to seek injunctive relief provided for in the Business and Professions Code.

(2) A limitation on the emergency decision procedure provided in Article 13 (commencing with Section 11460.10) of Chapter 4.5.

(Added by Stats.1990, c. 1597 (S.B.2375), § 35.)

(Amended by Stats. 1998, c. 878 (SB 2239), § 57; Stats.1993, c. 1267 (S.B.916), § 54; Stats.1995, c. 938 (S.B.523), § 51, operative July 1, 1997.)

Hospital District Law, Division 23 (commencing with Section 32000) of the Health and Safety Code or governing bodies of municipal hospitals formed pursuant to Article 7 (commencing with Section 37600) or Article 8 (commencing with Section 37650) of Chapter 5 of Division 3 of Title 4 of the Government Code, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record. However, in all cases in which the petition alleges discriminatory actions prohibited by Section 1316 of the Health and Safety Code, and the plaintiff makes a preliminary showing of substantial evidence in support of that allegation, the court shall exercise its independent judgment on the evidence and abuse of discretion shall be established if the court determines that the findings are not supported by the weight of the evidence.

(e) Where the court finds that there is relevant evidence that, in the exercise of reasonable diligence, could not have been produced or that was improperly excluded at the hearing before respondent, it may enter judgment as provided in subdivision (f) remanding the case to be reconsidered in the light of that evidence; or, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, the court may admit the evidence at the hearing on the writ without remanding the case.

(f) The court shall enter judgment either commanding respondent to set aside the order or decision, or denying the writ. Where the judgment commands that the order or decision be set aside, it may order the reconsideration of the case in the light of the court's opinion and judgment and may order respondent to take such further action as is specially enjoined upon it by law, but the judgment shall not limit or control in any way the discretion legally vested in the respondent.

(g) Except as provided in subdivision (h), the court in which proceedings under this section are instituted may stay the operation of the administrative order or decision pending the judgment of the court, or until the filing of a notice of appeal from the judgment or until the expiration of the time for filing the notice, whichever occurs first. However, no such stay shall be imposed or continued if the court is satisfied that it is against the public interest. The application for the stay shall be accompanied by proof of service of a copy of the application on the respondent. Service shall be made in the manner provided by Title 5 (commencing with Section 405) of Part 2 or Chapter 5 (commencing with Section 1010) of Title 14 of Part 2. If an appeal is taken from a denial of the writ, the order or decision of the agency shall not be stayed except upon the order of the court to which the appeal is taken. However, in cases where a stay is in effect at the time of filing the notice of appeal, the stay shall be continued by operation of law for a period of 20 days from the filing of the notice. If an appeal is taken

Appendix

Code of Civil Procedure

1094.5. Inquiry into Validity of Administrative Order or Decision

(a) Where the writ is issued for the purpose of inquiring into the validity of any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior tribunal, corporation, board, or officer, the case shall be heard by the court sitting without a jury. All or part of the record of the proceedings before the inferior tribunal, corporation, board, or officer may be filed with the petition, may be filed with respondent's points and authorities, or may be ordered to be filed by the court. Except when otherwise prescribed by statute, the cost of preparing the record shall be borne by the petitioner. Where the petitioner has proceeded pursuant to Section 68511.3 of the Government Code and the Rules of Court implementing that section and where the transcript is necessary to a proper review of the administrative proceedings, the cost of preparing the transcript shall be borne by the respondent. Where the party seeking the writ has proceeded pursuant to Section 1088.5, the administrative record shall be filed as expeditiously as possible, and may be filed with the petition, or by the respondent after payment of the costs by the petitioner, where required, or as otherwise directed by the court. If the expense of preparing all or any part of the record has been borne by the prevailing party, the expense shall be taxable as costs.

(b) The inquiry in such a case shall extend to the questions whether the respondent has proceeded without, or in excess of jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.

(c) Where it is claimed that the findings are not supported by the evidence, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence. In all other cases, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.

(d) Notwithstanding subdivision (c), in cases arising from private hospital boards or boards of directors of districts organized pursuant to The Local

California Code of Regulations

Title 1. General Provisions

Division 2. Office of Administrative Hearings

Chapter 1. General APA Hearing Procedures

§ 1000. Purpose.

*** These regulations specify the procedures by which the Office of Administrative Hearings conducts matters before it. *** Parties should also refer to the Administrative Procedure Act (Government Code sections 11370 *** through 11529) and/or other laws *** which apply to their case. When a statute is in conflict with or inconsistent with these regulations, the statute shall take precedence.

NOTE:

Authority: Section 11370.5(b), Government Code.

Reference: Section 11370 -- 11529, Government Code.

§ 1002. Definitions.

(a) As used in these regulations, the following definitions apply:

- (1) "ALJ" means an administrative law judge of the Office of Administrative Hearings.
- (2) "Day" refers to a calendar day, unless otherwise specified.
- (3) "Declaration" means a statement under penalty of perjury which complies with Code of Civil Procedure section 2015.5.
- (4) "Hearing" means the adjudicative hearing on the merits of the case.
- (5) "Motions" shall include all motions or applications for orders.
- (6) "OAH" means the Office of Administrative Hearings.
- (7) "Presiding Judge" means the Presiding Judge of the regional office of the Office of Administrative Hearings.
- (8) "Serve" or "Service" of papers means delivery of the document by the means specified in Regulation 1008 and as required by law.

(b) These definitions are supplementary to those found in Government Code section 11500 and other applicable laws and regulations.

NOTE:

Authority: Section 11370.5(b), Government Code.

Reference: Section 11500, Government Code, Section 2015.5, Code of Civil Procedure.

§ 1004. Construction * * * of Regulations.

- (a) All references in these regulations to specific laws are for informational purposes only and are not intended to be all inclusive.
- (b) As used in these regulations, words in the singular shall include the plural and words in the plural shall include the singular, unless the context otherwise requires.
- (c) Statutory references are to the Government Code unless otherwise specified.
- (d) Whenever a time is stated, in these regulations, within which an act is to be done, the time is computed by excluding the first * * * Day and including the last * * * Day. If the last * * * Day is any day OAH is closed for business, that * * * Day is also excluded.
- (e) Time limits set forth in these regulations are not jurisdictional.

NOTE:

Authority: Section 11370.5(b), Government Code.

Reference: Section 11370.5(b), Government Code.

§ 1006. Format and Filing of Papers.

- (a) After a matter has been assigned to a regional office of OAH for Hearing, papers filed * * * pursuant to these regulations, any provision of law, or ALJ order should be filed at the regional office within the time limits set by regulation or other provision of law.
- (b) The first page of each paper filed should include the following:
 - (1) The name, address, and telephone number of the party filing the paper, including the State Bar number if the filer is an attorney;
 - (2) A caption setting forth the title of the proceeding, including the names of the agency and the respondent;
 - (3) The agency case number;
 - (4) The OAH * * * case number, if assigned;
 - (5) A brief title describing the paper filed;
 - (6) The name of the ALJ assigned to the case, if known; and
 - (7) The dates of the Hearing and any future prehearing or settlement conferences, if known.
- (c) 8 1/2" x 11" stock paper of customary weight and quality is preferable.
- (d) Papers should be typed or computer-printed. Type should be at least pica (10 characters per inch) or 12 point print. The color of the type should be blue-black or black.
- (e) In addition to a paper copy, the ALJ may request a party to submit pleadings or other papers on computer compatible diskette or by other electronic means if the party * * * is able to

- (c) At the Hearing, the evidence related to costs shall be presented by the agency before conclusion of its case in chief.
- (d) In the proposed decision the ALJ shall make * * * factual findings and legal conclusions regarding the agency's request for costs. When a cost award is less than the amount requested or is denied altogether, the proposed decision shall state the reasons. When costs are awarded, the proposed decision shall include an order setting forth the amount to be paid.

NOTE:

Authority: Section 11370.5(b), Government Code.

Reference: Sections 125.3(c), 3753.5(a), 4990.17 and 5107(b), Business and Professions Code. Sections 11507.6 and 11520(b), Government Code.

§ 1044. Request for Expenses after Default.

When a request is made for expenses pursuant to section 11520(b), the party to whom payment is to be made shall submit a * * * Declaration setting forth, with specificity, the expenses incurred as a result of respondent's failure to appear.

NOTE:

Authority: Section 11370.5(b), Government Code.

Reference: Section 11520(b), Government Code.

§ 1042. Agency Request for Costs of Investigation and Prosecution of the Case.

- (a) When an agency requests costs of investigation and prosecution of the case, it shall allege in the pleading a demand for the costs and the authorizing statute or regulation * * *.
- (b) Unless the applicable cost recovery statute provides otherwise, evidence relating to cost recovery shall be submitted in the following manner:
 - (1) Evidence relating to costs shall be submitted by * * * Declaration executed by the agency or its designee * * *.
 - (2) A * * * Declaration in support of costs incurred by the agency for services provided by regular agency employees should include sufficient information by which the ALJ can determine the costs incurred in connection with the matter and the reasonableness of * * * the costs* * * (for example, a general description of tasks performed, the time spent on * * * each task, and the method of calculating the cost for * * * the services).
 - (3) Services provided by other persons shall be supported by * * * a Declaration by that person providing each service which should contain sufficient information by which the ALJ can determine the costs incurred in the matter and the reasonableness of * * * the costs* * * (for example, a general description of the tasks performed, the time spent on * * * each task and the hourly rate or other form of compensation). In lieu of * * * the service provider's Declaration, the agency or its designee may attach to its * * * Declaration copies of time and billing records upon which costs were incurred by the agency.
 - (4) For other costs incurred by the agency, the bill, invoice, or other similar document reflecting the cost incurred by the agency should be attached to the * * * Declaration submitted by the agency or its designee.
 - (5) Where the agency seeks a cost award based on an estimate of actual costs incurred, the * * * Declaration should explain the * * * reason actual cost information is not available.
 - (6) The ALJ may, at his or her discretion, permit any party to present testimony relevant to the imposition and reasonableness of costs.

do so.

- (f) A party wishing proof of the filing of a paper should submit either an extra copy of the paper or the first page only, with a self-addressed, return envelope, postage prepaid. The clerk will return the copy marked with the date of filing.
- (g) Papers may be filed with OAH by facsimile transmission. Unless required by the ALJ, the original paper need not be filed with OAH if the party obtains telephonic or other confirmation from OAH that a complete and legible copy of the papers was received.
- (h) Papers delivered to OAH or complete papers received by OAH by facsimile transmission during regular business hours (8 a.m. to 5 p.m.) will be filed on the day received. Papers received at times other than regular business hours will be filed on the next regular business * * * Day. Papers delivered by the U.S. Postal Service are filed on the date received by OAH.

NOTE:

Authority: Section 11370.5(b), Government Code.

Reference: Sections 11507.3, 11507.7, 11508(c), 11511, 11511.5, 11512(c) and 11524, Government Code.

§ 1008. Service; Proof of Service.

- (a) Proof of Service of papers shall be made by a * * * Declaration stating * * * the title of the paper Served or filed, the name and address of the person making the Service, and that he or she is over the age of 18 years and not a party to the matter.
- (b) Service may be made by leaving the paper at the residence or business of the person named to be Served, with a person not less than 18 years of age. Where Service is made by this personal delivery, the * * * Declaration shall also * * * state the date and place of delivery and the name of the person to whom the papers were handed. Where the person making the Service is unable to obtain the name of the person to whom the papers were handed, the person making the Service may substitute a physical description for the name.
- (c) Where Service is made by mail, the * * * Declaration shall show the date and place of deposit in the mail, the name and address of the person Served as shown on the mailing envelope and that the envelope was sealed and deposited in the mail with the postage fully prepaid.
- (d) Where Service is by facsimile the * * * Declaration shall * * * state the method of Service upon each party, the date and time sent and the facsimile number to which the document was sent.
- (e) The proof of Service * * * Declaration shall be signed by the person making it and contain the following statement above the signature:

"I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and this * * * Declaration was executed at _____ (city, state) _____ on _____ (date) _____."

The name of the declarant shall be typed and signed below this statement.

- (f) Proof of Service made in accordance with Code of Civil Procedure section 1013a complies with this Regulation.

NOTE:

Authority: Section 11370.5(b), Government Code.

Reference: Section 11440.20, Government Code. Section 1013a, Code of Civil Procedure.

§ 1012. *Ex Parte* Applications for Temporary or Interim Orders.

- (a) This regulation applies to any *ex parte* application made by an agency to OAH for temporary relief or interim orders specifically authorized by statute or regulation.
- (b) Absent good cause, parties shall be given at least 24 hours notice of the specific relief sought and the date, time, and place of the *ex parte* proceeding. Notice may be given by telephone or facsimile transmission.
- (c) At the time of the *ex parte* appearance the applicant shall submit a written * * * Declaration stating the manner in which the notice was given.
- (d) If prior notice was not given, the applicant shall submit a written * * * Declaration stating the facts showing cause why the requested order should be issued without notice.
- (e) *Ex parte* applications shall be in writing and comply with Regulation 1006. The application shall state the statutory authority for the temporary relief and include a proposed order.

NOTE:

Authority: Section 11370.5(b), Government Code.

Reference: Section 494, Business and Professions Code. Sections 1550.5 and 1558, Health and Safety Code. Section 11529, Government Code.

§ 1018. Agency Request for Hearing; Notice of Hearing.

- (a) An agency's request to OAH to set a Hearing date shall be in writing and contain the following information:
- (1) The title of the proceeding including the identities of the agency and respondent(s);
 - (2) The agency case number and, if known, the OAH * * * case number;
 - (3) The names, addresses and phone numbers of all parties and their representatives, if any;
 - (4) The time estimate for Hearing, taking into account the time for respondent's case;
 - (5) The dates the agency is unavailable for Hearing;

§ 1038. Ordering the Record.

**** Note:** This regulation repealed and reenacted effective 7/1/03**

- (a) If OAH has provided the stenographic reporter or tape recorder for the proceeding, a person may contact the OAH transcript coordinator to order and pay for preparation of all or a portion of the complete record in the Case. Except as provided in (d), OAH will not arrange for all or any portion of the record to be prepared until the requesting person has paid a deposit equal to the estimated cost of preparation. The deposit will be applied to the actual cost and any excess will be returned to the person who submitted it. The record will not be released until the person ordering the record has paid any balance due for the actual cost of preparing the record.
- (b) The complete record includes the pleadings, all notices and orders issued by the agency, any proposed decision by an ALJ, the final decision, a transcript of all proceedings, all exhibits whether admitted or rejected, the written evidence and any other papers in the Case, except as provided by law.
- (c) Any person may request a copy of all or a portion of the record, subject to any protective orders or provisions of law prohibiting disclosure.
- (d) A party seeking a waiver of fees and costs to prepare the record for the purpose of judicial review under Code of Civil Procedure section 1094.5 who has been declared in forma pauperis (Government Code section 68511.3) shall submit a valid order issued by the Superior Court.
- (e) If the official record of the Hearing or other proceeding was made by audio tape, copies of the audio tape(s) are available upon written request to the OAH transcript clerk and payment of the costs of duplication. Copies of audio tapes and transcripts made from the copies are not part of the official record.
- (f) This regulation does not apply if the agency for whom OAH has conducted the proceeding has provided the stenographic reporter or tape recorder. In those proceedings, a person seeking to order all or a portion of the record must directly contact the agency

NOTE: Authority: Section 11370.5(b), Government Code.

Reference: Section 1094.5, Code of Civil Procedure. Section 11512 and 11523, Government Code. Section 985, California Rules of Court.

- designee) not later than * * * 5 business Days before the Hearing. If an ALJ is not assigned 15 * * * Days in advance of the Hearing, then the challenge shall be made within a reasonable time after the ALJ is assigned to the Hearing. In no event shall any ALJ entertain the Motion if it is made after the commencement of Hearing.
- (g) If a prehearing conference is not held and the matter is set for Hearing at a site other than one of the four regional offices of OAH, and the Hearing ALJ is assigned at least 15* * * Days before the Hearing, the challenge shall be made to the Presiding Judge (or designee) not later than * * * 5 business Days before the Hearing. If an ALJ is not assigned 15 * * * Days in advance of the Hearing, then the challenge shall be made by 5 p.m. on the Thursday prior to the week in which the Hearing is to commence. Any challenge by any other party to a subsequently assigned ALJ shall be made by noon on Friday prior to the week in which the Hearing is to commence. In no event shall any ALJ entertain the challenge if it is made thereafter.
- (h) Assignments of ALJs may be ascertained by contacting the Presiding Judge or, in the case of Sacramento or Los Angeles, the chief calendar clerk (or designee).
- (i) Any * * * Declaration filed pursuant to this regulation shall be in substantially the following form:
- I, _____ (name) _____, declare: That I am a party (or attorney or authorized representative for a party) to the pending matter. That the Judge assigned to the Hearing is prejudiced against the party (or his or her attorney or authorized representative of record) or the interest of the party (or his or her attorney or authorized representative) so that the declarant cannot or believes that he or she cannot have a fair and impartial Hearing before the Judge. This * * * Declaration is under penalty of perjury under the laws of the state of California and is signed _____ (date) _____ at _____ (city and state) _____.
- (j) Unless required for the convenience of OAH or unless good cause is shown, a continuance of the Hearing shall not be granted by reason of the making of a challenge under this regulation. If a continuance is granted, the matter shall be continued to the first convenient day for OAH and shall be reassigned or transferred for Hearing as promptly as possible.
- (k) Nothing in this regulation shall affect or limit the provisions of a challenge for cause under sections 11425.40, 11430.60 and 11512(c).

NOTE: Authority: Section 11370.5(b), Government Code.
Reference: Sections 11425.40, 11430.60 and 11512(c), Government Code.

- (6) Any statute or regulation (if other than section 11517(b)) which specifies the time within which the Hearing shall be held or the proposed decision issued * * *; and
- (7) The city or county in which the Hearing will be held, pursuant to section 11508.
- (b) The document used by the agency to request the Hearing date shall contain a space for OAH to insert the OAH * * * case number assigned to the matter, and the date(s), time and location set for the Hearing. OAH shall transmit this information simultaneously to the agency, respondent(s), and representative(s) of the respondent(s) identified in the request to set document. The transmission of this information by OAH does not replace the notice of Hearing required by section 11509.

NOTE:

Authority: Section 11370.5(b), Government Code.
Reference: Sections 11508 and 11509, Government Code.

§ 1020. * * * Motion For Continuance Of Hearing.

- a) Upon the filing of any pleading with OAH, the matter is assigned to the Presiding Judge until reassigned to another ALJ.
- b) Motions to continue a Hearing shall be made in writing with a copy sent to all other parties. * * *
- c) * * * Motions to continue a Hearing shall be directed to the Presiding Judge (or designee). The Presiding Judge (or designee) may assign consideration of the * * * Motion to the ALJ assigned to hear the matter.
- d) The * * * Motion shall include the case name, OAH case number, the date, time and place of the Hearing of the matter sought to be continued, and the address and daytime telephone number of the moving party. The Motion shall list all previous Motions to continue the matter and their dispositions. The * * * Motion shall include * * * alternative dates preferred by the moving party, and whether or not the other parties agree. * * *
- e) The * * * Motion shall state any statute or other law which requires * * * the matter to be set within a certain period of time* * * and whether the requirement is waived. * * * No continuance may be granted absent a waiver from the appropriate parties.
- f) The * * * Motion shall * * * state all facts which * * * constitute good cause to continue the matter. If the Motion is untimely pursuant to section 11524(b) or other applicable statute, the Motion shall state the reason.
- g) Any party opposing the * * * Motion shall file and Serve on all parties a statement of the opposition. * * * h) The * * * Motion may include a proposed order granting the continuance. Any party may request a written order from OAH reflecting the disposition of the * * * Motion.

- i) The Presiding Judge (or designee) has discretion, in appropriate circumstances, to waive the requirement for a written Motion, written opposition, and/or any notice to other parties.

NOTE:

Authority: Section 11370.5(b), Government Code.

Reference: Section 11524, Government Code. Arnett v Office of Administrative Hearings, 49 Cal.App.4th 332 (1996).

§ 1022. Motions.

- (a) A Motion to continue a case pursuant to section 11524 shall be made pursuant to the provisions of Regulation 1020.
- (b) * * * A Motion shall be made with written notice to all parties, unless the Motion is made during a Hearing while on the record, or unless a specific statute or regulation permits an ex parte application, in which case the moving party shall give all other parties 24 hour notice in accordance with Regulation 1012. No Motion shall be made without an attached proof of Service of the Motion upon all parties, unless made during a Hearing while on the record.
- (c) * * * Where a prehearing conference has been or will be scheduled in the matter, all Motions shall be filed in accordance with the Regulation 1026 requirements for filing Motions at the prehearing conference and shall be heard at the prehearing conference, unless the ALJ determines otherwise.
- (d) * * *(Any Motion made pursuant to this Regulation shall be made to the ALJ assigned to hear the case or to the Presiding Judge.
- (e) No special form of Motion is required. Motions and any response thereto should conform to the requirements of Regulation 1006. The Motion shall state in plain language the relief sought and the facts and circumstances the moving party contends support the Motion and shall be supported by a recitation of legal authority.
- (f) Except as otherwise provided by statute or regulation, or as ordered by the ALJ, a Motion shall be made and filed at least 15 * * * Days before the date set for the commencement of the Hearing* * *, and any response to the Motion shall be filed and Served no later than * * * 3 Days before the date the Motion is scheduled to be heard or as ordered by the ALJ.
- (g) OAH shall set the time and place for the hearing of the Motion. The hearing shall occur as soon as practicable.
- (h) Except as otherwise provided by statute or regulation, a Motion filed pursuant to this Regulation may be decided without oral argument. Any party may request oral argument at the time of the filing of the Motion or response. If the ALJ orders oral argument, the party requesting oral argument, or any party directed to do so by the ALJ, shall Serve written notice on all

record.

- (p) Requests for continuance of the date of the initial settlement conference shall be addressed to the Presiding Judge. However, the ALJ assigned to the settlement conference may, at the conclusion of the conference, continue it to any other convenient date or time prior to the date set for Hearing.
- (q) Any final settlement, reached inside or outside the settlement conference, shall be set forth in a written stipulation, settlement agreement or consent order, or an oral agreement placed on the record.
- (r) The parties shall promptly notify the OAH calendar clerk of all settlements, stipulations, agency orders or any other action terminating a matter before OAH, regardless of how reached. A copy of * * * the settlement, stipulation, agency order or * * * any other paper terminating a matter before OAH, or the first page and signature pages thereof, at the discretion of the agency, shall be filed with OAH.
- (s) When notified of any final settlement, OAH will vacate any Hearing date and close its file in the matter.

NOTE: Authority: Section 11370.5(b), Government Code.

Reference: Sections 11415.60 and 11511.7, Government Code.

§ 1034. Peremptory Challenge.

Pursuant to section 11425.40(d), a party is entitled to one disqualification without cause of an assigned ALJ (peremptory challenge) which will be granted in any OAH Hearing subject to the following:

- (a) A party is not entitled to a peremptory challenge in any proceeding relating to applications for temporary relief or interim orders.
- (b) The peremptory challenge shall be directed to the Presiding Judge (or designee) or the assigned ALJ.
- (c) The peremptory challenge shall be made by the party, attorney or authorized representative appearing in any proceeding by oral or written * * * Declaration consistent with the requirement of paragraph (i), below.
- (d) Notice of a written challenge shall be Served on opposing parties.
- (e) If a prehearing conference is held, and an ALJ has been assigned to the Hearing, then any challenge to the assigned ALJ shall be made no later than the commencement of the first prehearing conference where the Hearing ALJ is assigned.
- (f) If a prehearing conference is not held and the matter is set for Hearing at one of the four regional offices of OAH, and the Hearing ALJ is assigned at least 15 * * * Days before the Hearing, the challenge shall be made to the Presiding Judge (or

- (h) The settlement ALJ may order the parties to bring to the conference the documents pertinent to settlement of the case for examination by the settlement ALJ. This may include reports, records, photographs, books, records, diagrams, maps, bills, contracts, and memoranda. If not ordered by the settlement ALJ, the parties are encouraged to bring these documents to the settlement conference for evaluation by the settlement ALJ.
- (i) The settlement ALJ may order the parties to bring a draft settlement proposal in an electronic format to be described in the order. If not otherwise ordered, the parties are encouraged to bring a draft settlement proposal on disk in DOS Text or other standard format.
- (j) The settlement ALJ may order the parties to submit a written settlement conference statement. This statement may be confidential if so marked and for the settlement ALJ only or may be Served on the parties. The statements should be submitted at least five * * * business Days before the conference, unless otherwise ordered by the settlement ALJ. If not ordered by a settlement ALJ, the parties, at their discretion, may submit a written settlement conference statement to the settlement ALJ that complies with the foregoing requirements.
- (k) The settlement conference statement shall comply with Regulation 1006 and describe the case and the relevant legal and factual issues. The statement and supporting material shall be sufficiently detailed to enable the settlement ALJ to conduct a meaningful settlement conference.
- (l) The settlement conference statement and other settlement materials shall not be made a part of the OAH case file. They shall be maintained in the file in an envelope marked "Settlement Conference Materials" for reference in future efforts to settle the case. If efforts at settlement are unsuccessful or if the matter goes to Hearing, the envelope shall be removed from the file.
- (m) No particular structure of the settlement conference is required. The structure shall be tailored to the needs of the particular dispute.
- (n) If, at a settlement conference, a settlement has not been reached but the parties have reached an agreement on any facts or other issues, the settlement ALJ shall issue an order confirming and approving, if necessary, those matters agreed upon, or shall request a party to prepare the order, or shall place the agreement upon the record.
- (o) If, at a settlement conference, a settlement has been reached, the settlement ALJ shall request a party to prepare the settlement agreement and/or may place the agreement upon the

parties of the date, time and place of the oral argument. Oral argument may be made by telephone conference call, video conference, or any other electronic means, in compliance with section 11440.30 and Regulation 1030. The ALJ may order that the proceedings be reported.

- (i) The ALJ shall issue a written order deciding any Motion, unless the Motion is made during the course of a Hearing while on the record. The ALJ may request the prevailing party to prepare a proposed order.
- (j) A request for a settlement conference or a prehearing conference does not constitute a Motion within the meaning of this Regulation.

NOTE: Authority: Section 11370.5(b), Government Code.

Reference: Sections 11440.30, 11507.3, 11507.7, 11508(c), 11511, and 11524, Government Code.

§ 1026. Prehearing Conferences.

- (a) Pursuant to section 11511.5(a), an ALJ may require a prehearing conference upon his or her own order or the request of any party. A request for a prehearing conference * * * should be addressed to the Presiding Judge, may be oral or in writing, and shall state the reasons for the prehearing conference.
- (b) All Motions to be heard at the prehearing conference shall be filed with OAH no later than 15 * * * Days before the prehearing conference and shall otherwise comply with Regulation 1022. Any response to Motions shall be filed with OAH no later than * * * 3 Days prior to the prehearing conference. The ALJ may, in his or her discretion, allow oral Motions during the prehearing conference.
- (c) Requests for continuance of the date of the prehearing conference shall be addressed to the Presiding Judge. However, the ALJ assigned to the prehearing conference may, at the conclusion of the conference, continue it to any other convenient date or time prior to the date set for Hearing.
- (d) At least 5 business * * * Days before a conference, each party shall file with OAH and Serve on all other parties a prehearing conference statement which shall contain the following information:
 - (1) Identification of all operative pleadings by title and date signed.
 - (2) The party's current estimate of time necessary to try the case.
 - (3) The name of each witness the party may call at the Hearing along with a brief statement of the * * * subject matter of the witness's expected testimony.
 - (4) The identity of any witness whose testimony will be

presented by affidavit pursuant to section 11514, if known.

- (5) The name and address of each expert witness the party intends to call at the Hearing along with a brief statement of the opinion the expert is expected to give. The party shall also attach a copy of a current résumé for each expert witness.
 - (6) Whether there is need for an interpreter or special accommodation at the Hearing.
 - (7) A list of the documentary exhibits the party intends to present at the Hearing and a description of any physical or demonstrative evidence.
 - (8) A concise statement of any legal issues which may affect the presentation of evidence or the disposition of the case.
- (e) Exhibits need not be premarked or filed with the prehearing conference statements unless requested by the ALJ. Exhibits shall be exchanged between the parties at least 5 business * * * Days before the prehearing conference. On agreement of the parties, exhibits already produced in discovery do not need to be exchanged.
- (f) The prehearing conference may be held by telephone or other electronic means pursuant to section 11511.5(c).
- (g) After the prehearing conference, the ALJ shall issue a prehearing order which incorporates the matters determined at the conference. This order may be issued orally if an accurate record can be made. Agreements on the simplification of issues, amendments, stipulations, or other matters may be entered on the record or may be made the subject of a written order by the ALJ. If no matters were determined or dates set at the prehearing conference, a prehearing order is not required.
- (h) Upon request of a party, the prehearing order shall be in writing. The ALJ may request a party to prepare a proposed prehearing order.

NOTE:

Authority: Section 11370.5(b), Government Code.

Reference: Sections 11420.10, 11445.10, 11511.5 and 11514, Government Code.

§ 1027. Informal Hearings.

- a) An agency may request a case to be heard as an informal hearing at the time the agency requests the matter to be set for Hearing. Such requests should be addressed to the Presiding Judge, who will decide if the case is so amenable. If the Presiding Judge decides that the case can be heard informally, pursuant to section 11445.10 et seq., the Presiding Judge will determine the limits on discovery, testimony, witnesses, evidence, arguments, and pleadings, and will advise the agency.

The Presiding Judge will also determine whether or not a prehearing conference is required.

- b) Parties may consent during a prehearing conference to adjudicate a matter by informal hearing rather than by formal hearing, if the use of an informal hearing would not violate any statutes, regulations, or the federal or state Constitution.
- c) If any respondent objects to an informal hearing, the ALJ shall convert the matter to a formal hearing.
- d) If, prior to or during the course of an informal hearing, the ALJ determines that the matter requires a formal hearing, the ALJ shall convert the hearing pursuant to section 11470.10 et seq.
- e) If, prior to or during the course of a formal hearing, the ALJ and all parties agree and no party's rights are substantially prejudiced, the formal proceeding may be converted to an informal hearing pursuant to section 11470.10.

NOTE: Authority: Section 11370.5(b), Government Code.

Reference: Sections 11445.10-11445.60, 11470.10, Government Code.

§ 1028. Settlement Conferences; Settlements.

- (a) This Regulation applies to settlement conferences scheduled at the request of a party or by order of the ALJ assigned to hear the case pursuant to section 11511.7(a).
- (b) At any time after a matter is assigned to OAH any party may file with OAH and Serve upon all parties a request for a settlement conference.
- (c) The discussions at the settlement conference shall not be disclosed to the ALJ assigned to hear the case, unless otherwise agreed to by the parties.
- (d) The respondent and his/her representative and the agency's representative shall attend the settlement conference. Someone within the agency with authority to recommend approval of a settlement by the agency shall either attend the settlement conference or be available by telephone at the time set for and throughout the settlement conference.
- (e) The settlement ALJ, for good cause shown, may excuse the attendance or availability of any person whose attendance is required. The request shall be made to the settlement ALJ not less than * * * 3 business Days before the date set for the settlement conference.
- (f) A telephone settlement conference may be arranged pursuant to section 11511.7(b).
- (g) Parties or their representatives shall be prepared to participate in settlement discussions. The parties' representatives who attend the conference shall be intimately familiar with the pertinent evidence.